

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Steinberg Analyst: William Koch Bill Number: SB 653  
 Related Bills: See Prior Analysis Telephone: 845-4372 Amended Date: April 27, 2011  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** FTB Administer Local Personal Income Tax

**SUMMARY**

This bill would authorize the governing board of any county or city and county (hereinafter "county"), and any school district, subject to voter approval, to impose, increase, or extend any of the following:

- A personal income tax.
- A transactions and use tax.
- A vehicle license fee (VLF).
- An excise tax, including but not limited to, an alcoholic and sweetened beverage tax, a cigarette and tobacco products tax, and a medical marijuana tax.
- An extractive business activities tax.
- An oil severance tax.

This analysis focuses on the local personal income tax provision of the bill as it is the only provision that would be administered by the Franchise Tax Board (FTB).

**RECOMMENDATION AND SUPPORTING ARGUMENTS**

No position.

**Summary of Amendments**

The April 27, 2011, amendments added provisions to the bill that would allow school districts to impose, increase, or extend any of the taxes identified above in the "Summary" section. The amendments also added provisions that would require any county and school district that assesses a local tax pursuant to this bill to reimburse the state for losses incurred as a result of deductions allowed on the state franchise or income tax return for the local taxes assessed.

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA        X   NP  
 \_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
 \_\_\_\_\_ N      \_\_\_\_\_ OUA

Legislative Director

Date

Brian Putler

05/04/11

As a result of the April 27, 2011, amendments, the "This Bill," "Implementation Considerations," and "Economic Impact" sections of the analysis of this bill as amended April 14, 2011, have been revised. The "Technical Considerations" section has been added and the "Policy Concerns" section is no longer applicable. The remainder of the department's analysis of this bill as amended April 14, 2011, still applies.

### THIS BILL

This bill would authorize the governing board of any county and any school district, subject to voter approval, to impose, increase, or extend a local personal income tax on county or school district residents that would be administered by the FTB.

The bill would authorize the local personal income tax with the following provisions:

- The local personal income tax imposed on a county or school district resident may not exceed one percent of the taxable income shown on the state personal income tax return and must be approved by the voters of that county or school district. The local personal income tax imposed would be treated as though it were imposed under the same statutes as the state income tax and may be imposed on one or more of the state income tax brackets.
- No state income tax credits would be applicable to reduce the local personal income taxes imposed.
- The county or the school district would be required to enter into an agreement with the FTB to perform all functions incident to the administration of the local personal income tax, including a provision that the county or the school district would reimburse the FTB for all refunds, losses, and costs incurred in the administration and operation of the local personal income tax.
- The ordinance or resolution authorized to impose a local personal income tax would become operative for taxable years beginning on or after January 1 of the first calendar year following approval by the voters of the county or the school district if the county elections official provides notice of the voter approval no later than September 30 of the preceding calendar year of the passage of the ordinance or resolution by voters.
- The bill would authorize the FTB to use any information sources or enforcement remedies available to the county or school district in addition to the information sources and remedies available to the FTB for administering the state income tax.
- FTB would be authorized to adopt regulations as necessary to administer the provisions of the bill.
- Local personal income tax amounts collected by the FTB would be transmitted to the Treasurer and deposited in the State Treasury to the credit of the Local Personal Income Tax Account (LPITA) in the General Fund that would be created by this bill. The moneys in the LPITA would be continuously appropriated, regardless of fiscal year, to the Controller for allocation to each county or school district for which the local personal income tax is imposed.

Under this bill, each fiscal year FTB, with assistance from the State Board of Equalization, would be required to estimate the losses incurred by the state General Fund attributable to each county or school district due to the personal itemized or business expense deduction of any local taxes levied, increased, or extended by this bill. Each fiscal year a county or school district would be required to reimburse the state for such losses based on the estimate provided by the FTB.

### IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill would make the operative date of the bill for taxable years beginning on or after January 1 of the first calendar year following approval by the voters, conditioned on the county elections official providing notice no later than September 30 of the preceding year. The bill is silent regarding who is to receive notice from the county. It is recommended that the author specify that notice of a voter approved local personal income tax would be required to be provided to the FTB. Additionally, because the bill does not provide an exception to the Administrative Procedures Act requirements, the operative date specified in the bill does not provide adequate time for the FTB to adopt regulations on all facets of administering and collecting a local personal income tax. It is recommended that the operative date be revised to be January 1 of the second calendar year after the enactment of the ordinance by voters to provide adequate time to complete the regulatory process.

The bill reimbursement structure would require the FTB to borrow funds from the General Fund programs it administers to implement and maintain the local personal income tax programs until the county or school district can reimburse those amounts at a later date. The FTB lacks sufficient resources to fund the local personal income tax program for any period without putting at risk the core mission of state income tax administration. It is recommended that, consistent with the process in place between the Board of Equalization and local entities for local sales tax administration, the amounts transferred to the county or school district be a net amount of funds collected reduced by the amount of costs, refunds, adjustments, or losses incurred by the FTB in administering the local personal income tax.

Additionally, while the bill would require the county or school district to reimburse the department for costs incurred to implement and administer the local personal income tax, recent budget adjustments have impacted the department's ability to perform the work necessary to implement this bill. Even with reimbursement, additional position authority would be necessary to implement the bill without adversely impacting the department's existing General Fund revenue generating workload priorities.

Tax officials of political subdivisions of the State may obtain tax information from the FTB only upon affidavit. At the time the tax official requests the tax information, he or she must provide a copy of the affidavit to the taxpayer whose information is sought, and upon request, make the obtained information available to that person.

If the author intends that the county or school district tax officials receive information through a different process, express authorization for the FTB to provide information relative to the local personal income tax reported, paid, or collected would need to be authorized under the bill.

The bill lacks administrative details that must be determined to implement the bill and determine its impacts to the department's systems, forms, and processes. The bill is silent on the following issues:

- Payment priority between state income tax and use tax reported on the return, which are both sources of General Fund revenues, and the local personal income tax.
- Payment priority between a county personal income tax and a school district personal income tax in instances where a taxpayer resides in an area that assesses both.
- The treatment of taxpayers filing jointly that do not both reside in the county or school district that has imposed the income tax.
- Because of California residents' mobility, how would residency in a county or school district be determined?
- Would wage withholding of amounts estimated to cover the local personal income tax be required? Would estimate tax payments be required? Would revisions to the Unemployment Insurance Code and withholding table requirements be needed?
- Because the county and school district of residence is unknown, how would nonfiler enforcement efforts be applied?
- According to the California Department of Education's website, there are over 900 "school districts" comprised of "unified school districts," "elementary school districts," and "high school districts." Because "school district" is undefined in the bill, it is unclear if all types of "school districts" would be allowed to assess a local personal income tax. If this is the case, a taxpayer could be subject to multiple types of local personal income taxes. For example, if a county, an elementary school district, and a high school district each assess a local personal income tax, a taxpayer could be subject to all three of those taxes if the taxpayer resides within the geographic boundaries of each of those entities.

It is recommended that the bill be amended to specify these conditions so that there is no confusion as to the author's intentions.

The FTB lacks the resources to identify taxpayers by county or school district of residence and would need to rely on taxpayers self declaring their residency on their state income tax return. In cases where a taxpayer is subject to a local personal income tax and fails to file a state income tax return, the department lacks the data to identify the county or school district of residence with certainty because most income data received by the department reflects the taxpayer's mailing address, which may not be in the same county or school district as the taxpayer's county or school district of residence. Calculating an estimated local personal income tax liability based on a taxpayer's "last known address" could result in inaccurate amounts being remitted to the affected counties or school districts.

Because not all counties or school districts would enact a local personal income tax immediately, the first county or school district to enact the tax would incur the entire cost for implementation while counties or school districts that enact the tax at a later date would not be charged the startup costs paid by the earlier enacting county or school district. To prevent disputes between counties, school districts, and the department, it is recommended that the author specify how costs should be allocated among the counties and school districts that enact a county income tax.

### TECHNICAL CONSIDERATIONS

On page 4, line 9, strike out “to”.

### **ECONOMIC IMPACT**

#### Revenue Discussion

The revenue impact of this bill depends on the amount of additional local taxes assessed that are reported on franchise and income tax returns as personal itemized or business expense deductions. Because this bill’s new local-level tax assessments would require the governing board of any county or school district and voter approval to become law, the revenue impact of this bill is unknown.

Using the VLF as an example, the bill would allow an increase to the VLF of up to 1.35 percent. If all counties elected to impose the maximum additional VLF assessment, the resulting revenue losses to the state from the higher deductions would total approximately \$150 million annually, which would be required to be reimbursed to the state in the following year.

Given the local approval requirements, it is assumed the earliest counties or school districts could impose a local assessment under this bill is July 1, 2013. Based on this assumption, the proposed local assessment would be deductible on the 2013 tax returns, to be filed during 2014.

### **LEGISLATIVE STAFF CONTACT**

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